

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

To:

see form PCT/ISA/220

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2007/011321

International filing date (day/month/year)
10.05.2007

Priority date (day/month/year)
11.05.2006

International Patent Classification (IPC) or both national classification and IPC
INV. A61M1/00 A61M27/00

Applicant
IASIS MEDICAL, LLC

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office - P.B. 5818 Patentlaan 2
NL-2280 HV Rijswijk - Pays Bas
Tel. +31 70 340 - 2040 Tx: 31 651 epo nl
Fax: +31 70 340 - 3016

Date of completion of
this opinion

see form
PCT/ISA/210

Authorized Officer

Lakkis, Angeliki

Telephone No. +31 70 340-4136



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2007/011321

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of:
 - ☒ the international application in the language in which it was filed
 - ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1 (b)).
2. ☐ This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43bis.1(a))
3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ on paper
 - ☐ in electronic form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in electronic form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
4. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
5. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2007/011321

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of

☐ the entire international application

☒ claims Nos. 41

because:

☒ the said international application, or the said claims Nos. 41 relate to the following subject matter which does not require an international search (*specify*):

see separate sheet

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed (*specify*):

☒ no international search report has been established for the whole application or for said claims Nos. 41

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13*ter*.1(a) or (b).

☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☒ See Supplemental Box for further details

**WRITTEN OPINION OF THE
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International application No.
PCT/US2007/011321

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	<u>8, 9, 16-24, 26, 29, 30, 39, 40</u>
	No: Claims	<u>1-7, 10-15, 25, 27, 28, 31-38</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-40</u>
Industrial applicability (IA)	Yes: Claims	<u>1-40</u>
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item III.

Claim 41: Rule 6.2(a) PCT

Re Item V.

1 Reference is made to the following documents:

D1 : US 2001/029956 A1 (ARGENTA LOUIS C [US] ET AL) 18 October 2001
(2001-10-18)

D2 : FR 1 163 907 A (WALTER PAUL) 2 October 1958 (1958-10-02)

D3 : US 2003/040687 A1 (BOYNTON THOMAS A [US] ET AL BOYNTON THOMAS
A [US] ET AL) 27 February 2003 (2003-02-27)

2 INDEPENDENT CLAIM 1

2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

Document D1 (paragraphs 31, 32, 40, 42, figures 1, 2, 8) (discloses (the references in parentheses applying to this document):

A wound therapy device, comprising a housing (58) to cover at least a portion of a wound, a liquid retention chamber positioned inside of the housing (interior space of 58) and a vacuum connection (distal end of 30a), the vacuum connection in gaseous communication with the liquid-retention chamber, the vacuum connection being separated from the liquid-retention chamber by a liquid barrier (38a).

2.2 Document D2 also discloses all the technical features of claim 1 (see whole page 1, especially the liquid barrier can be identified either as the cotton (3) or as the cock (5)) so that the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT over D2, either.

3 INDEPENDENT CLAIMS 31, 36

The subject-matter of claims 31 and 36 is not new over either D1 or D2 or D3 (see passages as above and cited in the search report). The reasons are as above under 2.1 and 2.2. and, for the means for preventing collapse in claim 38, see the rigidity of the housings. Therefore the present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 31 and 36 is not new in the sense of Article 33(2) PCT.

4 DEPENDENT CLAIMS 2-30, 32-35, 37-40

Dependent claims 2-30, 32-35, 37-40 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT), see the cited documents and passages and the common knowledge in the field of wound drainage.

Re Item VIII.

- 5.1 Claim 5 is unclear (Article 6 PCT) since it relates to a "flexible barrier" whereby it is not clear whether the "liquid barrier" defined in claim 1 is meant or a different, additional one.
- 5.2 Independent claims 1, 31, 36 all relate to a wound therapy device, making the scope of protection unclear (Article 6 PCT).